

The Administrator signed the following rule on November 29, 2007 and we are submitting it for publication in the *Federal Register*. While we've taken steps to ensure the accuracy of this Internet version of the rule, it's not the official version. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. The Federal Register should publish the official version by mid-December 2007. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 94

[EPA-HQ-OAR-2007-0120; FRL_XXXX-X]

RIN 2060-A026

Change in Deadline for Rulemaking to Address the Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: A February 2003 final rule established the first U.S. emission standards for new compression-ignition Category 3 marine engines, those with a per-cylinder displacement at or above 30 liters. It also established a deadline of April 27, 2007 for EPA to promulgate a second set of emission standards for these engines. This rulemaking schedule was intended to allow time to consider the state of technology for deeper emission reductions and the status of international action for more stringent standards. Since 2003 we have continued to gain a greater understanding of technical issues and assess the continuing efforts of manufacturers to apply advanced emission control technologies to these engines. In addition, we have continued to work with and through the International Maritime Organization toward more stringent emission standards that would apply to all new marine diesel engines on ships engaged in international transportation. Much of the information necessary to develop more stringent Category 3 marine diesel engines standards has become available only recently and we expect more information to come to light in the course of the current negotiations underway as part of the international process. EPA is therefore adopting a new deadline for the rulemaking to consider the next tier of Category 3 marine diesel engine standards. Under this new schedule, EPA would adopt a final rule by December 17, 2009. EPA has started this rulemaking process by publishing an Advance Notice of Proposed Rulemaking elsewhere in today's Federal Register.

DATES: This rule is effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: All documents in the docket are listed in the www.regulations.gov index under Docket ID No. EPA-HQ-OAR-2007-0120. Some information listed in the index is not publicly available, such as confidential business information or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, EPA/DC, EPA

West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Michael Samulski, Assessment and Standards Division, Office of Transportation and Air Quality, 2000 Traverwood Drive, Ann Arbor, MI, 48105; telephone number: (734) 214-4532; fax number: (734) 214-4050; email address: samulski.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action will affect companies that manufacture, sell, or import into the United States new marine compression-ignition engines for use on vessels flagged or registered in the United States; companies and persons that make vessels that will be flagged or registered in the United States and that use such engines; and the owners or operators of such U.S. vessels. This action may also affect companies and persons that rebuild or maintain these engines. Affected categories and entities include the following:

| Category | NAICS Code ^a | Examples of potentially affected entities |
|----------|-------------------------|--|
| Industry | 333618 | Manufacturers of new marine diesel engines. |
| Industry | 336611 | Manufacturers of marine vessels. |
| Industry | 811310 | Engine repair and maintenance. |
| Industry | 483 | Water transportation, freight and passenger. |

^a North American Industry Classification System (NAICS)

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action as noted in **FOR FURTHER INFORMATION CONTACT**.

I. Background

EPA published the intended change in the rulemaking schedule for Category 3 marine diesel engines as a direct final rule (72 FR 20948, April 27, 2007). We received adverse comments from six state and non-governmental organizations. As a result, we retracted the direct final rule and are proceeding with the rulemaking based on the proposal that was published concurrent with the direct final rule. Comments received on the direct final rule are therefore considered to be comments on the concurrent proposed rule. In this action we are announcing our decision to change the regulatory deadline as intended and responding to those comments.

II. Summary of the Rule

In this final rule we are extending the regulatory deadline for issuing a final rule setting more stringent standards for Category 3 marine diesel engines to December 17, 2009. This additional time will allow us to better address significant remaining concerns about the emission control technologies and create a compliance program that ensures proper implementation of new standards. This approach will allow us to set standards that achieve the maximum emission

reductions from these engines. We do not believe this extension will delay emission reductions from Category 3 marine diesel engines beyond what could be achieved by setting standards sooner. Instead, it creates the opportunity for the development and implementation of a more effective program for the longer term. Finally, this delay will allow us to take advantage of information that is being prepared for consideration by the International Maritime Organization as part of the ongoing negotiations to amend MARPOL Annex VI under the International Convention for the Prevention of Pollution from Ships.

III. Basis for the Rule

A. History of EPA's Category 3 Standards

In February 2003, we adopted standards for new marine diesel engines with per- cylinder displacement at or above 30 liters per cylinder (also called Category 3 marine diesel engines; see 68 FR 9746, February 28, 2003). The program consisted of a two-part approach. First, we adopted near-term Tier 1 standards that went into effect in 2004 and were based on readily available control technology. Those standards are identical to the international standards adopted at the International Maritime Organization in MARPOL Annex VI. Second, we adopted regulations that set a schedule for a future rulemaking to assess and adopt an appropriate second tier of standards. We explained that it was appropriate to defer a final decision on the longer-term Tier 2 standard to a future rulemaking because there were several outstanding technical issues concerning the widespread commercial use of advanced control technologies on engines of this size. We highlighted the following concerns in the 2003 final rule:

- Selective catalytic reduction has been widely used in stationary applications and there are now efforts underway to use this technology for marine applications. We expressed concerns that these systems may not be capable of working effectively during the low-speed and light-load operation typical of operation closest to port areas where emission control is most important. We also noted that this approach could lead to increased emissions of PM, especially direct sulfate PM. There was also a concern that high fuel sulfur levels could lead to premature wear of catalyst materials.
- Various approaches for adding water to the combustion event were also cited as possible approaches to reduce NO_x emissions by 50 to 80 percent. There were concerns that adding water could increase engine wear with its low lubricity and increase PM emissions (by decreasing combustion temperatures). We also noted that new approaches to adding water-- humidification and steam injection -- held promise for substantially greater control of NO_x emissions.
- We raised several questions related to implementation and compliance provisions that would be appropriate with a new set of standards. For example, we need to develop an effective approach to address off-cycle emissions and uncertainties related to test-fuel specifications and PM measurement methods relative to the high sulfur concentrations typical of in-use fuels. We also raised the possible need to create a compliance program that would allow for emission controls to be disabled for operation on the open ocean and restored upon entry into some defined boundary representing U.S. coastal waters. These issues are complicated and need time for resolution.

We expected new information to become available with respect to (1) new developments as

manufacturers continue to make various improvements with respect to emission aftertreatment; (2) data or experience from recently initiated in-use installations using advanced technologies; and (3) information from longer-term in-use experience that would be helpful for evaluating the long-term durability of emission controls.

The revision of the deadline for Tier 2 of the standards for new Category 3 marine diesel engine standards is permitted by the Clean Air Act. Clean Air Act section 213(a)(3) requires EPA to adopt and periodically revise regulations that contain standards concerning certain pollutants reflecting the greatest degree of emission reductions achievable through the application of technology that will be available, taking into consideration the availability and costs of the technology, and noise, energy, safety factors and existing motor vehicle standards. EPA's strategy toward achieving the maximum level of emission control from Category 3 marine diesel engines is consistent with those statutory requirements. See *Bluewater Network v. EPA*, 372 F. 3d 404 D.C. Cir. (2004).

B. Need for Revised Schedule

Deferring the Tier 2 standards to a second rulemaking has allowed us to obtain more information on the implementation of advanced technologies. Toward that end, we are publishing an Advance Notice of Proposed Rulemaking elsewhere in today's Federal Register in which we describe the new information and our current thinking with regard to potential new requirements for Category 3 marine diesel engines. This new information comes from field experiences related to the continuing pilot projects to test new technologies, several recently published technical papers, and ongoing negotiations in the context of developing MARPOL Annex VI standards. This includes a better understanding of the capabilities and constraints associated with selective catalytic reduction, the potential for seawater scrubbers to control PM emissions, and the possibility of relying on the use of distillate fuel as a part of the overall approach to reducing emissions. For example, it appears that selective catalytic reduction can be quite tolerant of high fuel sulfur levels, but reactors would need to be physically larger to avoid sulfur-related problems. Also, pairing selective catalytic reduction with oxidation catalysts allows for reactivity at substantially lower exhaust temperatures. This would help to address the concern for controlling emission at light engine loads.

As we prepare a proposed rule to set standards based on advanced emission control technologies, we intend to resolve remaining questions for crafting a complete set of requirements. This will include consideration of testing requirements that reflect the need for engines using selective catalytic reduction to control emissions at light engine loads typical of operation in port areas. We will also consider whether further technological developments with selective catalytic reduction and water-based technologies will allow us to pursue PM emission standards more stringent than we are currently contemplating.

Control of PM and SO_x emissions depends on a combination of using distillate fuel and adding seawater scrubbers for removing emissions from engines that burn residual fuel. EPA will be separately pursuing the appropriate designations under MARPOL Annex VI such that all vessels would need to either use distillate fuel or achieve an equivalent level of emission control with seawater scrubbers. We intend to address certification requirements for seawater scrubbers

in the rulemaking proposal for setting emission standards for Category 3 marine diesel engines. In addition, the proposal will address remaining questions for applying such standards to the current fleet in addition to new vessels, and for disposing of emissions removed from the exhaust gases, including the possible negative impacts on water quality for discharged wastewater.

The proposed rule will also rely on development and use of new analytic tools to assess the costs and benefits of alternative emission control strategies, especially related to at-sea emissions and how they are transported to shore.

Additional time will also allow us to take advantage of the ongoing negotiations for amendments to MARPOL Annex VI. When we finalized our Tier 1 standards in 2003, we anticipated that negotiations for the next round of international standards would begin shortly thereafter. Due to many delays, Members of the Convention did not agree to begin negotiations until July 2006, and the first round of negotiations did not occur until November 2006. These negotiations are expected to conclude in October 2008. These negotiations provide a key forum for sharing information on the performance of current installations. In addition, the IMO Secretary General has commissioned an experts group to examine control alternatives for PM and SOx emissions; this information will also be important for developing the national standards. EPA is involved in these negotiations as a member of the U.S. delegation to IMO.

All these rulemaking issues are described in more detail in the Advance Notice of Proposed Rulemaking published elsewhere in today's Federal Register. This Advance Notice initiates the rulemaking process for adopting a more stringent set of standards for Category 3 marine diesel engines.

C. New Schedule

EPA remains committed to developing and proposing Tier 2 emission standards for Category 3 marine diesel engines. Advanced technology solutions are available or under development for these engines. However, it is necessary to resolve the questions described above before we are ready to propose a program with appropriate Tier 2 emission standards for these engines.

Our commitment to Tier 2 standards is evidenced by our position at the IMO and in the Advance Notice of Proposed Rulemaking. Specifically, as part of the process for setting new emission standards under IMO, the United States submitted a paper to the April 2007 BLG Sub-Committee meeting (called BLG-11) setting out an approach for substantially reducing emissions from marine diesel engines.¹ If adopted, these standards could achieve significant reductions in NOx, particulate matter (PM), and oxides of sulfur (SOx) emissions from marine vessels.² This framework formed the basis of the approach we are currently pursuing for an EPA

¹ "Revision of the MARPOL Annex VI, the NOx Technical Code and Related Guidelines; Development of Standards for NOx, PM, and SOx," submitted by the United States, BLG 11/5, Sub-Committee on Bulk Liquids and Gases, 11th Session, Agenda Item 5, February 9, 2007, Docket ID EPA-HQ-OAR-2007-0121-0034. This document is also available on our website: www.epa.gov/otaq/oceanvessels.htm

² "Revision of MARPOL Annex VI, The NOx Technical Code and Related Guidelines; Development of Standards for NOx, PM, and SOx," Submitted by the United States to the Sub-Committee on Bulk Liquids and Gases, 11th Session, 2007.

rulemaking under the Clean Air Act to establish Tier 2 standards for Category 3 marine diesel engines, as described in the Advance Notice of Proposed Rulemaking. We expect the information we receive during this international process and as comments on the Advance Notice to provide very useful information in addressing our remaining concerns.

We do not believe this extension will delay emission reductions from Category 3 marine diesel engines beyond what could be achieved by setting standards sooner. If we would adopt emission standards earlier, we would need to allow several years of lead time to give manufacturers opportunity to work out remaining technological issues in designing engines with advanced emission control technologies for all sizes and types of vessels. Manufacturers have continued to make progress in developing these technologies in the meantime, which will help us tailor requirements to what emission reductions are achievable and should allow us to adopt a program with shorter lead time relative to the final rule setting these emission standards. Any foregone emission reductions from delaying the implementation of emission standards would likely be offset by our ability to set more stringent standards based on the additional information that is available by setting standards at the later date.

In sum, the delay in issuing the final rule for more stringent emission standards for Category 3 marine diesel engines is reasonable given the need to address certain technical issues and collect further information. We believe there will be no significant foregone emission reductions resulting from the delayed rulemaking schedule. In contrast, the additional time allows the opportunity to develop and implement a more effective program for the longer term.

In recognition of the current situation, we are taking this action to establish a new rulemaking deadline that will facilitate our ability to adopt emission standards consistent with the statutory directive, while advocating adoption of the same controls as part of the international process. In this action we are adopting a new deadline of December 17, 2009 for a final rule that will address additional emission standards for Category 3 marine diesel engines as appropriate under section 213(a)(3) of the Clean Air Act.

IV. Summary and Analysis of Comments

A. Summary of Comments

Commenters pointed out that Category 3 marine diesel engines are significant and growing contributors to air pollution in the United States. This included reference to various EPA estimates and was supplemented by several estimates for specific areas. Several commenters pointed out the acute need for reduced emissions from these engines in California, particularly in the South Coast Air Basin. For example, over half of current or projected levels of SO_x and diesel PM emissions in the South Coast Air Basin are estimated to come from marine vessels (or all port-related sources). SO_x emissions from marine vessels in particular would need to be reduced by about 90 percent in the next few years for the South Coast Air Basin to reach timely attainment of the air quality standard for PM_{2.5}. The South Coast Basin is also home to the Ports of Los Angeles and Long Beach, which are claimed to be the entry point for 40 percent of the nation's goods, with cargo throughput projected to triple by 2025. Santa Barbara County, California was noted as another particular concern, where 75 percent of local NO_x emissions are

projected to come from marine vessels, even though there are no commercial ports within county boundaries. One commenter referenced a finding that 70 percent of global shipping emissions occur within 400 kilometers of shore, where pollution transport may range from 400 to 1200 kilometers inland.

Commenters emphasized that the emissions from Category 3 marine diesel engines contribute to serious public health and environmental problems. Commenters cited the EPA finding that diesel exhaust is a likely human carcinogen. Diesel particulate matter, ozone, SO_x, and air toxic emissions were identified as substantial causes of environmental degradation, illness, and/or death. Commenters noted that emissions from marine diesel engines also raise concerns for environmental justice, since the pollution effects fall disproportionately on the relatively low-income residential areas surrounding ports and transportation corridors.

Commenters cited Clean Air Act section 213 and EPA's 1994 and 1998 findings to establish the significance of emissions from nonroad engines in general and Category 3 marine diesel engines specifically as demonstration that EPA had a mandatory duty to set technology-forcing emission standards for these engines. Commenters further maintained that missing the regulatory deadline violated EPA's repeated statements committing to take final action on the schedule reflected in the regulation. Commenters noted that in similar circumstances the District Court of the District of Columbia compelled EPA to take a final action based on a regulatory deadline EPA had earlier adopted as part of the effort to address hazardous air pollutants from motor vehicles. Commenters further reasoned that the court decision upholding the sufficiency of the Tier 1 standards adopted in February 2003 depended on EPA's commitment to adopt more stringent emission standards for these engines by the established deadline.

Commenters claimed that delaying implementation of emission standards based on the need for more time to evaluate potential emission controls is without merit and outside the scope of EPA's rulemaking authority. Rather, commenters view Clean Air Act section 213 as requiring EPA to establish technology-forcing standards based on projected future advances in pollution control capabilities. Commenters further argue that the necessary advances for low-emission technologies for these engines have already occurred and these technologies are widely used in commercial applications today, and that EPA has provided no reasoned basis describing why the originally adopted schedule was not sufficient to address any remaining technical concerns related to emission control technologies. For example, commenters cited EPA's report of more than 300 marine engines operating worldwide with selective catalytic reduction, including oceangoing vessels. Some commenters also disagreed with the logic of EPA's argument that setting intermediate-stringency standards would prevent more effective long-term standards, noting Congress's intent for periodic review and update of nonroad emission standards to reflect the evolutionary nature of emission control technology. Commenters also pointed out that more stringent emission control are urgently needed, given the large number of ships expected to be built in over the coming years and the difficulty of retrofitting vessels to reduce emissions.

Commenters also posit that it is impermissible and inappropriate for EPA to allow international negotiations to nullify its obligations under the Clean Air Act. Commenters point out that Clean Air Act section 213 does not allow for foreign-policy considerations to serve as the basis for determining whether or how to set emission standards for nonroad engines, and that

the Supreme Court recently reinforced this principle in the decision related to greenhouse gas emissions. This was presented as an inappropriate means of shifting power from the Congress to the Executive Branch. Commenters further maintain that EPA has failed to explain how emission standards adopted for the United States under the Clean Air Act would hamper international negotiations (or how the specific and feasible standards EPA has recommended for consideration at IMO lack information needed for pursuing standards under U.S. law). They emphasized other examples of international agreements that followed implementation of domestic regulations in the United States, and argued that the delays in adoption of international standards for marine diesel engines were in fact a basis for EPA to pursue separate requirements. Aside from a general skepticism that the IMO process would lead to meaningful emission reductions from these engines, commenters promoted the contrary view that rigorous U.S. emission standards would provide the political and technical foundation for international action regarding Category 3 marine diesel engines, and that EPA has missed out on an opportunity to demonstrate to the IMO that the United States is serious about reducing emissions from large marine vessels and will act unilaterally if the IMO does not. Commenters recommended that EPA pursue emission standards based on the recent U.S. proposal for consideration under the IMO process.

Commenters noted that the decision to delay the deadline for setting new emission standards also postpones EPA's promised decision regarding the authority to apply U.S. emission standards to engines on foreign-flagged vessels. Commenters also made the following arguments to emphasize that EPA should decide affirmatively to apply emission standards to engines on foreign-flagged vessels:

- Clean Air Act section 213 requires EPA to set emission standards for all classes of nonroad engines that contribute to air pollution in the United States, without distinguishing between domestic and foreign engines.
- EPA has repeatedly acknowledged that foreign-flagged vessels account for the clear majority of emissions from Category 3 marine diesel engines.
- Court decisions have established that foreign-flagged vessels in U.S. ports and water are subject to U.S. regulations other than those pertaining to a ship's "internal management and affairs."
- International law explicitly protects the right of the U.S. to regulate foreign-flagged ships in U.S. ports and waters.
- As described above for emission standards, the court upheld EPA's refusal to decide whether to regulate foreign flagged vessels on the basis that EPA promised to address the issue in its 2007 rulemaking.

Commenters concluded by emphasizing their interest in seeing EPA establish and commit to a firm and timely deadline to develop and implement stringent emission standards for Category 3 marine diesel engines, with rulemaking and implementation schedules expedited as much as possible to address EPA's legal obligations and the compelling air quality needs associated with these standards.

B. Analysis of Comments

We are mindful of the extent to which Category 3 marine diesel engines contribute to air pollution in coastal and inland areas of the United States. We do not disagree with the general characterization of the emission contribution or health and environmental impacts described by commenters.

However, we believe that amending the regulatory deadline to allow more time to address several remaining technical issues and collect some additional information is reasonable and consistent with our authority under the statute. The February 2003 final rule fulfilled our statutory obligation under Clean Air Act section 213 to set standards for Category 3 marine diesel engines. In *Bluewater Network v. EPA*, 372 F. 3d 404 D.C. Cir. (2004), the Court upheld EPA's rulemaking as having met the statutory requirement to establish standards that achieve the greatest degree of emission reduction. As a result, we disagree with the comments suggesting that we have failed to meet our mandatory statutory duty to set initial emission standards.

We have an additional obligation to periodically revise the emission standards to ensure that they reflect the greatest degree of emission control considering various statutory factors. We set a schedule for producing a new rulemaking to adopt these more stringent emission standards by April 2007 but have found that this did not allow sufficient time for completion, as described above. The delay rulemaking schedule we are adopting in this notice is reasonable in light of these issues and is consistent with Congress' intent that EPA consider the availability of technologies that can achieve the desired reductions, as well as the necessary lead time, cost, noise, energy and safety issues with adopting such standards.

As part of the process for setting new emission standards under IMO, the United States submitted a paper to the April 2007 BLG Sub-Committee meeting (called BLG-11) setting out an approach for substantially reducing emissions from marine diesel engines.³ In parallel with this development toward a new set of international standards, we are initiating a rulemaking under the Clean Air Act to adopt these standards for the United States by publishing an Advance Notice of Proposed Rulemaking elsewhere in today's Federal Register.

We believe there has been great progress toward establishing the feasibility of controlling NO_x, SO_x, and PM emissions from these engines. Laboratory and in-field pilot demonstrations have significantly advanced the development of emission control technologies and allowed for relatively near-term projections for deploying these technologies in commercial service. These developments have allowed us to advocate specific emission targets as participating members of IMO in the effort to adopt more stringent emission standards. These targets are also the basis of our Advance Notice of Proposed Rulemaking. As described in the Advance Notice, we are still concluding resolution of the technological issues described above. We also expect to receive information through the international process and as comment on the Advance Notice of Proposed Rulemaking to help us address these remaining concerns.

While we are supporting the efforts in an international forum to set global emission

³ "Revision of the MARPOL Annex VI, the NO_x Technical Code and Related Guidelines; Development of Standards for NO_x, PM, and SO_x," submitted by the United States, BLG 11/5, Sub-Committee on Bulk Liquids and Gases, 11th Session, Agenda Item 5, February 9, 2007, Docket ID EPA-HQ-OAR-2007-0121-0034. This document is also available on our website: www.epa.gov/otaq/oceanvessels.htm

standards, we are not deferring to that process in pursuing emission standards under the Clean Air Act. By initiating our own rulemaking to set new emission standards, we are pursuing an approach in which harmonized U.S. and global standards would be developed in parallel. While we are mindful of the timing of the international process and the state of these negotiations, the reasons described above for taking additional time to adopt a new round of emission standards hinge on the factors specified by Congress for considering the timing for implementing new emission standards, especially for the feasibility, lead time, and costs associated with new emission controls.

Regarding the question of applying emission standards to foreign-flagged vessels, we understand the positions expressed by commenters, as well as the contrary views expressed by commenters in previous rulemaking activity, and will be taking these concerns into account as we pursue a decision on this issue, which we will describe with supporting rationale in the proposal for setting emission standards for these engines.

The Advance Notice of Proposed Rulemaking is the next step toward developing more stringent emission standards for Category 3 marine diesel engines under the Clean Air Act. We intend to pursue these aggressive emission reductions, both in the EPA rulemaking and in the international process. The revised regulatory deadline included in this final rule indeed reflects a delay from the original April 2007 target, but we believe the revised schedule will allow for a thorough consideration of a wide range of important issues that need to be addressed before we can adopt an appropriate set of requirements for these engines. We continue to believe that pursuing resolution of these issues in an EPA rulemaking in parallel with the ongoing international negotiations will be the best path to leverage the most effective program for reducing the emissions impact from Category 3 marine diesel engines on U.S. air quality.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section (3)(f)(1) Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. This final rule has been sent to OMB for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine diesel engines. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in 40 CFR 94 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0287, EPA ICR number 1684.10. A copy of the approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine engines. We have therefore concluded that this final rule will relieve regulatory burden for all affected small businesses.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4,

establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why such an alternative was adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, tribal governments, or the private sector as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. This rule contains no regulatory requirements that would significantly or uniquely affect small governments. EPA has determined that this rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine engines. This rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with

State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine diesel engines. Thus, Executive Order 1312 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule does not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine engines. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5-501 of the Order directs

the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in EO 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine diesel engines.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine engines.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. This final rule merely changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine engines. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This final rule merely

changes the regulatory schedule for a rulemaking to address emissions from Category 3 marine diesel engines.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule is effective on [insert 30 days after Federal Register publication].

L. Statutory Authority

The statutory authority for this action comes from section 213 of the Clean Air Act as amended (42 U.S.C. 7547). This action is a rulemaking subject to the provisions of Clean Air Act section 307(d). See 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

Dated:

Stephen L. Johnson,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 94—CONTROL OF AIR POLLUTION FROM MARINE COMPRESSION –
IGNITION EMISSIONS**

1. The authority citation for part 94 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

2. Section 94.8 is amended by revising paragraph (a)(2)(ii) to read as follows:

§94.8 Exhaust emission standards.

(a) * * *

(2) * * *

(ii) EPA has not finalized Tier 2 standards for Category 3 engines. EPA will promulgate final Tier 2 standards for Category 3 engines on or before December 17, 2009.

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